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Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

# HOUSE BILL 2440

AN ACT

AMENDING SECTIONS 23-621, 23-724, 23-726, 23-727, 23-729, 23-730, 23-769, 23-771, 23-773, 23-775, 23-779, 23-787 AND 23-791, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-621, Arizona Revised Statutes, is amended to  
3 read:

4 23-621. Unemployed

5 A. An individual shall be deemed "unemployed" with respect to any week  
6 during which the individual performs no services and with respect to which no  
7 wages are payable to the individual, or with respect to any week of less than  
8 full-time work without any fault on the individual's part if the wages  
9 payable to the individual with respect to the week are less than the  
10 individual's weekly benefit amount.

11 B. AN INDIVIDUAL SHALL NOT BE DEEMED "UNEMPLOYED" WITH RESPECT TO ANY  
12 WEEK OF LESS THAN FULL-TIME WORK IF THE LOSS OF FULL-TIME WORK IS DIRECTLY  
13 ATTRIBUTABLE TO THE FAULT OF THE INDIVIDUAL.

14 C. AN INDIVIDUAL SHALL NOT BE DEEMED "UNEMPLOYED" IF THE INDIVIDUAL IS  
15 RECEIVING WAGES IN LIEU OF NOTICE, DISMISSAL PAY OR SEVERANCE PAY. THE  
16 PERIOD OF TIME FOR WHICH WAGES IN LIEU OF NOTICE, DISMISSAL PAY OR SEVERANCE  
17 PAY ARE ALLOCABLE SHALL BE DETERMINED BY EITHER OF THE FOLLOWING:

18 1. IF THERE WAS A WRITTEN CONTRACT BETWEEN THE EMPLOYER AND THE  
19 CLAIMANT IN EFFECT AT THE TIME OF SEPARATION, ALLOCATE TO THE APPROPRIATE  
20 PERIOD IN ACCORDANCE WITH THE CONTRACT, CONTINUING FOR THE NUMBER OF WORK  
21 DAYS THAT THE PAY WOULD COVER AT THE REGULAR WAGE RATE.

22 2. IF NO WRITTEN CONTRACT WAS IN EFFECT AT THE TIME OF SEPARATION,  
23 ALLOCATE TO THE APPROPRIATE PERIOD FOLLOWING THE LAST DAY OF PERFORMANCE OF  
24 SERVICES, CONTINUING FOR THE NUMBER OF WORK DAYS THAT THE PAY WOULD COVER AT  
25 THE REGULAR WAGE RATE.

26 Sec. 2. Section 23-724, Arizona Revised Statutes, is amended to read:

27 23-724. Liability determinations; review; finality

28 A. When the department makes a determination, which determination  
29 shall be made either on the motion of the department or upon application of  
30 an employing unit, that an employing unit constitutes an employer as defined  
31 in section 23-613 or that services performed for or in connection with the  
32 business of an employing unit constitute employment as defined in section  
33 23-615 which is not exempt under section 23-617 or that remuneration for  
34 services constitutes wages as defined in section 23-622, the determination  
35 shall become final with respect to the employing unit fifteen days after  
36 written notice is served personally or by certified mail addressed to the  
37 last known address of the employing unit, unless within such time the  
38 employing unit files a written request for reconsideration.

39 B. When a request for reconsideration is filed as prescribed in  
40 subsection A of this section, a reconsidered determination shall be made. The  
41 reconsidered determination shall become final with respect to the employing  
42 unit thirty days after written notice thereof is served personally or by  
43 certified mail addressed to the last known address of the employing unit,  
44 unless within such time the employing unit files with the appeals board a  
45 written petition for hearing or review. ~~All contribution and wage reports~~

~~asserted by the department to be due on or before the date the petition for review is filed including any individuals and amounts in dispute shall be submitted substantially complete, as prescribed by department regulation, prior to the expiration of the thirty day period, if the employer is to be afforded an opportunity for hearing.~~ The department may for good cause extend the period within which the written petition ~~and reports are~~ IS to be submitted. ~~Submission of the required reports shall under no circumstances constitute an admission that such reports were due or should have been filed.~~ IF THE RECONSIDERED DETERMINATION IS APPEALED TO THE APPEALS BOARD AND THE DECISION BY THE APPEALS BOARD IS THAT THE EMPLOYING UNIT IS LIABLE, THE EMPLOYING UNIT SHALL SUBMIT ALL REQUIRED CONTRIBUTION AND WAGE REPORTS TO THE DEPARTMENT WITHIN FORTY-FIVE DAYS AFTER THE DECISION BY THE APPEALS BOARD.

C. On an employer's written request and the submission of pertinent information to the department, the department shall, or on its own motion may, ~~in its discretion~~ consider whether a determination, reconsidered determination or decision which has become final should be revised. Revision shall be granted if either:

1. There has been a substantial and material change in the facts on which the determination, reconsidered determination or decision relied.

2. There has been a change in the law or interpretation of the law which warrants a revised determination, reconsidered determination or decision.

D. The effective date of a revision under subsection C of this section is either:

1. The date on which the change occurred if the employer's request with the pertinent information is filed no later than the last day of the month immediately subsequent to the calendar quarter in which the change occurred.

2. The first day of the calendar quarter in which the employer files the request and submits the pertinent information unless the employer demonstrates to the satisfaction of the department that good cause exists for the failure to notify the department within the period prescribed by paragraph 1 of this subsection of the occurrence of the change warranting the revision. In the event such good cause is demonstrated, the effective date shall be the date of the change.

E. A refusal to grant relief under subsection C of this section may not be appealed unless within fifteen days the employer appeals the refusal to the appeals board. Notwithstanding any other provision of law and pursuant to such an appeal, the appeals board may initiate hearings to obtain information and issue a decision as to whether the relief requested in subsection C of this section should be granted. Thereafter, the appeals board shall issue a decision in the matter. The decision may not be appealed with respect to the employing unit unless petition for review and request for

1 review are filed within the time and in the manner provided in section  
2 23-672.

3 F. The determination of the department or decision of the appeals  
4 board, together with the record, shall be admissible in any subsequent  
5 judicial proceeding involving liability for contributions. A determination  
6 or decision that an employing unit is liable which has become final shall be  
7 conclusive and binding upon the employing unit and shall not be reconsidered  
8 in proceedings brought before the department or a hearing officer.

9 G. Any reconsidered determination issued pursuant to subsection B of  
10 this section and any contribution rate redetermination or denial issued  
11 pursuant to section 23-732, subsection A shall contain the following:

12 1. The facts considered and the facts relied on in making the  
13 determination.

14 2. The specific statutes, regulations or other authority relied on in  
15 making the determination.

16 3. The reasoning applied in making the determination.

17 4. The appeal rights related to the determination and the time period  
18 after which the determination becomes final.

19 H. ~~Where~~ IF any determination covered by subsection G of this section  
20 is defective because it fails to meet the requirements of subsection G of  
21 this section, the defect may be cured by issuance of a corrected, amended or  
22 new determination. If a defect is alleged and specified in writing within  
23 the period for appeal, all time periods applicable to the determination are  
24 suspended pending the curative action.

25 I. This section does not preclude the department from at any time  
26 correcting clerical errors that have occurred in the administration of this  
27 chapter.

28 Sec. 3. Section 23-726, Arizona Revised Statutes, is amended to read:  
29 23-726. Contributions; voluntary payment

30 A. Contributions shall accrue and become payable by each employer for  
31 each calendar year in which ~~he~~ THE EMPLOYER is subject to this chapter with  
32 respect to wages for employment. The contributions shall become due and be  
33 paid by each employer to the commission for the fund in accordance with such  
34 regulations as the commission prescribes, and shall not be deducted, in whole  
35 or in part, from the wages of individuals in the employer's employ.

36 B. In the payment of contributions, a fractional part of a cent shall  
37 be disregarded unless it amounts to one-half cent or more in which case it  
38 shall be increased to one cent. FROM AND AFTER DECEMBER 31, 2004, THE  
39 PAYMENT OF CONTRIBUTIONS OR JOB TRAINING EMPLOYER TAXES IS NOT REQUIRED IF  
40 THE QUARTERLY AMOUNT OF THE CONTRIBUTIONS AND TAXES IS LESS THAN TEN DOLLARS.

41 C. An employer may make voluntary payments in addition to the  
42 contributions required under this chapter, ~~which~~ THAT shall be credited to  
43 ~~his~~ THE EMPLOYER'S account in accordance with commission regulation. The  
44 voluntary payments shall be included in the employer's account as of the  
45 employer's most recent computation date if they are made on or before the

1 following January 31. Voluntary payments when accepted from an employer will  
2 not be refunded in whole or in part.

3 Sec. 4. Section 23-727, Arizona Revised Statutes, is amended to read:

4 23-727. Credits and charges to employer accounts

5 A. The commission shall maintain a separate account for each employer  
6 and shall credit the account with all contributions and payments in lieu of  
7 contributions paid by the employer and shall charge the account with all  
8 benefits chargeable to it.

9 B. Nothing in this chapter shall be construed to grant any employer or  
10 individuals in ~~his~~ ITS service prior claims or rights to the amounts paid by  
11 the employer into the fund.

12 C. Except as otherwise provided in subsections D, E, ~~F,~~ and G ~~OF THIS~~  
13 ~~SECTION~~ and sections 23-773 and 23-777, benefits paid to an individual shall  
14 be charged against the accounts of ~~his~~ ~~THE INDIVIDUAL'S~~ base-period  
15 employers. The amount of benefits so chargeable against each base-period  
16 employer's account shall bear the same ratio to the total benefits paid to an  
17 individual as the base-period wages paid to the individual by the employer  
18 bear to the total amount of base-period wages paid to the individual by all  
19 ~~his~~ ~~THE INDIVIDUAL'S~~ base-period employers.

20 D. Benefits paid to an individual whose separation from work with any  
21 employer occurs under conditions found by the commission to be within ~~the~~  
22 ~~provisions of paragraph 1 or 2 of~~ ~~THOSE PRESCRIBED BY~~ section 23-775,  
23 ~~PARAGRAPH 1 OR 2~~ or for compelling personal reasons not attributable to the  
24 employer and not warranting disqualification for benefits, ~~shall not be used~~  
25 as a factor in determining the future contribution rate of the employer from  
26 whose employment the individual so separated, but the employer shall  
27 establish the condition of such separation to the satisfaction of the  
28 commission by submitting ~~such~~ information ~~as~~ the commission requires within  
29 ten days after the date of notification or mailing of notice by the  
30 commission that the individual has first filed a claim for benefits.

31 E. Benefits paid to an individual who, during ~~his base-period~~ ~~THE~~  
32 ~~INDIVIDUAL'S BASE PERIOD~~, earned wages for part-time employment with an  
33 employer shall not be used as a factor in determining the future contribution  
34 rate of ~~such~~ ~~THAT~~ employer if ~~he~~ ~~THE EMPLOYER~~ continues to give employment  
35 ~~OPPORTUNITIES~~ to the individual to the same extent while he is receiving  
36 benefits as during the base period and the employer ~~establishes such fact by~~  
37 ~~submitting such~~ ~~SUBMITS~~ information ~~as~~ the commission may require within ten  
38 ~~WORKING~~ days after the date of notification or mailing of notice by the  
39 commission that the individual has first filed a claim for benefits. ~~THE~~  
40 ~~COMMISSION HAS THE BURDEN OF PROOF TO ESTABLISH THAT THE EMPLOYER FAILED TO~~  
41 ~~GIVE EMPLOYMENT OPPORTUNITIES TO THE INDIVIDUAL TO THE SAME EXTENT AS DURING~~  
42 ~~THE BASE PERIOD.~~

1 F. Benefits paid to an individual ~~and~~ whose employment was terminated  
2 by retirement pursuant to a nongovernmental retirement or ~~lump-sum~~ LUMP SUM  
3 retirement pay plan under which the age of mandatory retirement has been  
4 agreed upon between the employer and ~~his~~ ITS employees or by the bargaining  
5 agent representing such employees, ~~shall not be used as a factor in~~  
6 determining the future contribution rate of ~~such~~ THAT employer but the  
7 employer shall establish ~~such~~ THAT fact by submitting ~~such~~ information ~~as~~ the  
8 commission may require within ten days after the date of notification or  
9 mailing of notice by the commission that the individual has first filed a  
10 claim for benefits.

11 G. Benefits paid pursuant to ~~the provisions of~~ section 23-771,  
12 ~~subsection~~ SUBSECTIONS B AND D shall not be used as a factor in determining  
13 the future contribution rate of the affected base-period employers.

14 H. A determination that benefits paid shall be used in determining  
15 future contribution rates of the employer may be appealed by the employer in  
16 the same manner provided for appeals of benefit determinations.

17 Sec. 5. Section 23-729, Arizona Revised Statutes, is amended to read:  
18 23-729. Change from the standard contribution rate

19 If an employer's account has been chargeable with benefits throughout  
20 the twelve consecutive calendar month period ending on June 30 of the  
21 preceding calendar year, the employer shall have a rate computed in  
22 accordance with section 23-730. If the employer's account has not been  
23 chargeable with benefits for that twelve month period, the employer shall pay  
24 contributions at the reduced rate of two ~~and seven-tenths~~ per cent.

25 Sec. 6. Section 23-730, Arizona Revised Statutes, is amended to read:  
26 23-730. Variation and adjustment of contribution rates

27 For calendar year 1985 and each calendar year thereafter, variations  
28 from the standard rate of contribution shall be determined in accordance with  
29 the following requirements:

30 1. If the total of all an employer's contributions, paid on or before  
31 July 31 of the preceding calendar year with respect to wages paid by the  
32 employer prior to July 1 of ~~such~~ THE preceding calendar year, equals or  
33 exceeds the total benefits ~~which~~ THAT were chargeable to the employer's  
34 account and were paid prior to July 1 of ~~such~~ THE preceding calendar year,  
35 with respect to weeks of unemployment beginning prior to ~~such~~ July 1, the  
36 employer's contribution rate for the ensuing calendar year subject to the  
37 adjustments provided by this section shall be determined from the employer's  
38 positive reserve ratio in accordance with the table provided in this  
39 paragraph. An employer's positive reserve ratio is the percentage resulting  
40 from dividing the employer's reserve surplus, which is the excess of  
41 contributions paid over benefits charged by the employer's average annual  
42 taxable payroll. If an employer's reserve equals zero, the employer's  
43 contribution rate for the ensuing calendar year shall be two and seven-tenths  
44 per cent, subject to the adjustments provided by this section.

	<u>Positive Reserve Ratio</u>	<u>Contribution Rate</u>
1	Less than 3%	2.60%
2		
3	At least 3% but less than 4%	2.40%
4	At least 4% but less than 5%	2.15%
5	At least 5% but less than 6%	1.90%
6	At least 6% but less than 7%	1.65%
7	At least 7% but less than 8%	1.40%
8	At least 8% but less than 9%	1.15%
9	At least 9% but less than 10%	0.90%
10	At least 10% but less than 11%	0.65%
11	At least 11% but less than 12%	0.40%
12	At least 12% but less than 13%	0.15%
13	13% or more	<del>0.05%</del> 0.02%

2. If the total of all an employer's contributions, paid on or before July 31 of the preceding calendar year with respect to wages paid by the employer prior to July 1 of ~~such~~ **THE** preceding calendar year, is less than the total benefits ~~which~~ **THAT** were chargeable to the employer's account and were paid prior to July 1 of ~~such~~ **THE** preceding calendar year, with respect to weeks of unemployment beginning prior to ~~such~~ July 1, the employer's contribution rate for the ensuing calendar year shall be determined from the employer's negative reserve ratio in accordance with the ~~tables~~ **TABLE** provided in this paragraph, subject to the rate adjustment provided in paragraph 3 ~~of this section~~, except that the rate is subject to increases but not to reduction. An employer's negative reserve ratio is the percentage resulting from dividing the employer's reserve deficit, which is the excess of benefits charged over contributions paid, by the employer's average annual taxable payroll. The table applicable to rate computation for calendar year 1987 and each calendar year thereafter is:

	<u>Negative Reserve Ratio</u>	<u>Contribution Rate</u>
29	Less than 3%	2.85%
30		
31	At least 3% but less than 4%	3.05%
32	At least 4% but less than 5%	3.30%
33	At least 5% but less than 6%	3.55%
34	At least 6% but less than 7%	3.80%
35	At least 7% but less than 8%	4.05%
36	At least 8% but less than 9%	4.30%
37	At least 9% but less than 10%	4.55%
38	At least 10% but less than 11%	4.80%
39	At least 11% but less than 12%	5.05%
40	At least 12% but less than 13%	5.30%
41	13% or more	5.40%

3. The ratio of the total assets of the fund on July 31 as defined by department regulation to the total taxable payrolls for the ~~twelve-month~~ **TWELVE MONTH** period immediately preceding the computation date shall

determine the required income rate for the ensuing calendar year in accordance with the following fund control schedule:

<u>Fund Ratio</u>	<u>Required Income Rate</u>
12.0% or more	0.40%
At least 10.0% but less than 12.0%	0.50%
At least 9.5% but less than 10.0%	0.60%
At least 9.0% but less than 9.5%	0.70%
At least 8.5% but less than 9.0%	0.80%
At least 8.0% but less than 8.5%	0.90%
At least 7.5% but less than 8.0%	1.00%
At least 7.0% but less than 7.5%	1.10%
At least 6.5% but less than 7.0%	1.20%
At least 6.0% but less than 6.5%	1.30%
At least 5.5% but less than 6.0%	1.40%
At least 5.0% but less than 5.5%	1.50%
At least 4.5% but less than 5.0%	1.70%
At least 4.0% but less than 4.5%	1.80%
At least 3.5% but less than 4.0%	2.00%
At least 3.0% but less than 3.5%	2.20%
Less than 3.0%	2.40%

For each calendar year the department shall compute the estimated required tax yield from employers ~~which~~ THAT is the product of the total taxable payrolls for the ~~twelve-month~~ TWELVE MONTH period immediately preceding the computation date and the applicable required income rate from the fund control schedule less the interest earned on monies in the fund during the ~~twelve-month~~ TWELVE MONTH period immediately preceding the computation date and credited to the fund by the United States treasury on or before October 31 following the computation date. Except as otherwise provided by statute, the rates in paragraphs 1 and 2 ~~of this section~~ shall be adjusted proportionately if the estimated required tax yield from employers exceeds or is less than the estimated yield from the rates without adjustment.

4. In computing an employer's adjusted rate as provided by paragraph 3 ~~of this section, such~~ THE adjusted rate shall be calculated to the nearest ~~one-hundredths~~ ONE-HUNDREDTH per cent UNLESS THE EMPLOYER HAS A POSITIVE RESERVE RATIO OF THIRTEEN PER CENT OR MORE. IF THE EMPLOYER HAS A POSITIVE RESERVE RATIO OF THIRTEEN PER CENT OR MORE, THE EMPLOYER'S ADJUSTED RATE SHALL BE CALCULATED TO THE NEAREST ONE-THOUSANDTH PER CENT. An employer's adjusted rate shall not be less than ~~five-hundredths~~ TWENTY-FIVE THOUSANDTHS per cent.

Sec. 7. Section 23-769, Arizona Revised Statutes, is amended to read:

23-769. Job training employer tax

A. Beginning on January 1, 2001, a tax equal to one-tenth of one per cent of taxable wages as provided and defined in section 23-622 and that are paid to an employee each year is imposed on each employer in this state except employers described in subsection B or C of this section.



1 B. Subsection A of this section does not apply to employers who have  
2 elected to become liable for payment in lieu of contributions pursuant to  
3 section 23-750.

4 C. Until the amount of the excise tax imposed pursuant to 26 United  
5 States Code section 3301 is reduced to six per cent or less, subsection A of  
6 this section does not apply to employers:

7 1. With a positive reserve ratio of at least thirteen per cent  
8 pursuant to section 23-730.

9 2. With a positive reserve ratio of at least twelve per cent but less  
10 than thirteen per cent.

11 3. That are assigned the contribution rate of two ~~and seven-tenths~~ per  
12 cent pursuant to ~~sections~~ SECTION 23-729 or TWO AND SEVEN-TENTHS PER CENT  
13 PURSUANT TO SECTION 23-730.

14 4. With a negative reserve ratio pursuant to section 23-730.

15 D. The department of economic security shall collect this tax on a  
16 quarterly basis and shall deposit, pursuant to sections 35-146 and 35-147,  
17 the monies collected pursuant to this section in the Arizona job training  
18 fund established by section 41-1544. Monies collected pursuant to this  
19 section shall not be commingled in any manner with monies collected pursuant  
20 to articles 4, 5 and 5.1 of this chapter.

21 E. FROM AND AFTER DECEMBER 31, 2004, THE PAYMENT OF CONTRIBUTIONS OR  
22 JOB TRAINING EMPLOYER TAXES IS NOT REQUIRED IF THE QUARTERLY AMOUNT OF THE  
23 CONTRIBUTIONS AND TAXES IS LESS THAN TEN DOLLARS.

24 Sec. 8. Section 23-771, Arizona Revised Statutes, is amended to read:  
25 23-771. Eligibility for benefits

26 A. An unemployed individual shall be eligible to receive benefits with  
27 respect to any week only if the department finds that the individual:

28 1. Has registered for work at and thereafter has continued to report  
29 at an employment office in accordance with such regulations as the department  
30 prescribes.

31 2. Has made a claim for benefits in accordance with ~~the provisions of~~  
32 section 23-772.

33 3. Is able to work.

34 4. Is available for work.

35 5. Has been unemployed for a waiting period of one week. ~~No~~ A week  
36 shall NOT be counted as a week of unemployment for the purpose of this  
37 paragraph:

38 (a) Unless it occurs within the benefit year ~~which~~ THAT includes the  
39 week with respect to which the individual claims payment of benefits.

40 (b) Unless the individual was eligible for benefits with respect  
41 thereto as provided in this section and sections 23-775 through 23-777.

42 (c) If benefits have been paid in respect thereto.

43 6. Has met one of the following requirements:

44 (a) Has been paid wages for insured work during the individual's base  
45 period equal to at least one and one-half times the wages paid to the

1 individual in the calendar quarter of the individual's base period in which  
2 such wages were highest, and the individual has been paid wages for insured  
3 work in one calendar quarter of the individual's base period equal to at  
4 least one thousand FIVE HUNDRED dollars.

5 (b) Has for a benefit year beginning on or after September 2, 1984,  
6 been paid wages for insured work during at least two quarters of the  
7 individual's base period and the amount of such wages paid in one quarter  
8 would be sufficient to qualify the individual for the maximum weekly benefit  
9 amount payable under this chapter and the total of the individual's ~~base~~  
10 ~~period~~ BASE-PERIOD wages is equal to or greater than the taxable limit as  
11 specified in section 23-622, subsection B, paragraph 1.

12 7. Following the beginning date of a benefit year established under  
13 this chapter or the unemployment compensation law of any other state and  
14 prior to the effective date of a subsequent benefit year under this chapter,  
15 has performed services whether or not in employment as defined in section  
16 23-615 for which wages were payable in an amount equal to or in excess of  
17 eight times the weekly benefit amount for which the individual is otherwise  
18 qualified under section 23-779. In making a determination under this  
19 paragraph the department shall use information available in its records or  
20 require the individual to furnish necessary information within thirty days  
21 from the date notice is given that such information is required.

22 B. If an unemployed individual cannot establish a benefit year as  
23 defined in section 23-609 due to receipt during the base period of  
24 compensation for a temporary total disability pursuant to chapter 6 of this  
25 title, or any similar federal law, the individual's base period shall be the  
26 first four of the last five completed calendar quarters immediately preceding  
27 the first day of the calendar week in which the disability began. Wages  
28 previously used to establish a benefit year may not be reused. This  
29 subsection does not apply unless all of the following occur:

30 1. The individual has filed a claim for benefits not later than the  
31 fourth calendar week of unemployment after the end of the period of  
32 disability.

33 2. The claim is filed within two years after the period of disability  
34 begins.

35 3. The individual meets the requirements of subsection A of this  
36 section.

37 4. The individual has attempted to return to the employment where the  
38 temporary total disability occurred.

39 C. If an unemployed individual is a member of the national guard or  
40 other reserve component of the United States armed forces, ~~he~~ THE INDIVIDUAL  
41 shall not be considered to be either employed or unavailable for work by  
42 reason of ~~his participating~~ THE INDIVIDUAL'S PARTICIPATION in drill, training  
43 or other national guard or reserve activity ~~which~~ THAT occurs on not more  
44 than one weekend per month or in lieu of a weekend drill or the equivalent.

1 D. THE DEPARTMENT SHALL NOT DISQUALIFY AN INDIVIDUAL FROM RECEIVING  
2 BENEFITS UNDER THIS CHAPTER ON THE BASIS OF THE INDIVIDUAL'S SEPARATION FROM  
3 EMPLOYMENT IF THE INDIVIDUAL IS A VICTIM OF DOMESTIC VIOLENCE AND LEAVES  
4 EMPLOYMENT DUE TO A DOCUMENTED CASE OF A DOMESTIC VIOLENCE OFFENSE AS DEFINED  
5 IN SECTION 13-3601 OR 13-3601.02. BENEFITS PAID TO AN INDIVIDUAL PURSUANT TO  
6 THIS SUBSECTION SHALL NOT BE CHARGED AGAINST AN EMPLOYER'S ACCOUNT PURSUANT  
7 TO SECTION 23-727, SUBSECTION G.

8 ~~D.~~ E. For the purposes of subsection A, paragraph 6, of this  
9 section, wages shall be counted as "wages for insured work" for benefit  
10 purposes with respect to any benefit year only if ~~such~~ THAT benefit year  
11 begins subsequent to the date on which the employing unit by which ~~such~~ THOSE  
12 wages were paid has become an employer subject to this chapter.

13 Sec. 9. Section 23-773, Arizona Revised Statutes, is amended to read:

14 23-773. Examination and determination of claims

15 A. A representative designated by the department as a deputy shall  
16 promptly examine any claim for benefits and, on the basis of the facts found  
17 by ~~him~~ THE DEPUTY, shall determine whether or not the claim is valid. If the  
18 claim is valid, the deputy shall also determine the week with respect to  
19 which the benefit year shall commence, the weekly benefit amount payable and  
20 the maximum duration ~~thereof~~ OF THE BENEFIT.

21 B. The deputy shall promptly notify the claimant and any other  
22 interested parties of the determination and the reasons for the  
23 determination. Except as provided in subsection D of this section, unless  
24 the claimant or an interested party, within seven calendar days after the  
25 delivery of notification, or within fifteen calendar days after notification  
26 was mailed to ~~his~~ THE CLAIMANT'S OR INTERESTED PARTY'S last known address,  
27 files an appeal from the determination, it shall become final, and benefits  
28 shall be paid or denied in accordance with the determination. If an appeal  
29 tribunal affirms a determination of the deputy allowing benefits, or the  
30 appeals board affirms a determination or decision allowing benefits, ~~such~~ THE  
31 benefits shall be paid regardless of any appeal ~~which~~ THAT may thereafter be  
32 taken, but if ~~such~~ THAT decision is finally reversed, no employer's account  
33 shall be charged with benefits so paid.

34 C. Upon receipt of a request from an interested party for information  
35 about a deputy's determination made pursuant to this section or section  
36 23-673, the department shall make available by memorandum or other written  
37 document within five days after receipt of the request the following  
38 information:

39 1. The facts considered and the facts relied on in making the  
40 determination.

41 2. The specific statutes, regulations or other authority relied on in  
42 making the determination.

43 3. The reasoning applied in making the determination.

44 D. Before the time for appeal as prescribed in subsection B of this  
45 section has expired, an interested party may request a reconsidered

determination. The department shall examine the request and, within seven calendar days, deny the request or issue a reconsidered determination. IF THE DEPARTMENT DENIES THE REQUEST BASED ON AN ALLEGED FAILURE OF THE INTERESTED PARTY TO MAKE A TIMELY RESPONSE BUT THE INTERESTED PARTY SUBSEQUENTLY PROVES THAT THE RESPONSE WAS TIMELY FILED AND RECEIVED BY THE DEPARTMENT, THE DEPARTMENT SHALL REPORT THAT RESULT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE INTERESTED PARTY MAY PROVE THAT A RESPONSE WAS TIMELY FILED BY USING EVIDENCE OF FAX RECORDS THAT DOCUMENTS THE DATE AND TIME WHEN A FAXED RESPONSE WAS TRANSMITTED AND RECEIVED BY THE DEPARTMENT. A request for reconsideration ~~which~~ THAT is denied shall be treated as an appeal, and the same procedure shall be followed as provided for in case of appeal from the original determination. If a reconsidered determination is issued, the time for appeal shall run from the date of issuance of the reconsidered determination. The employer and the claimant shall each be permitted no more than one request for reconsideration on each case.

E. Before the actual filing of an appeal under subsection B of this section, but not later than the time permitted to appeal, the department on its own motion may issue a reconsidered determination. After the time for appeal has expired, but within one year after the issuance of the original determination, the department with authorization of the unemployment insurance program administrator may issue a reconsidered determination, on the basis of newly discovered evidence ~~which~~ THAT by due diligence could not have been previously discovered, if no administrative or judicial review has occurred or is pending on the original determination. If a redetermination is based on fraud, the one year limitation on the issuance of redeterminations does not apply.

F. Prompt notice in writing of any reconsidered determination under subsection E of this section and the reasons for reconsideration shall be given to all interested parties. An interested party may appeal within the time prescribed under subsection B of this section, and the same procedure shall be followed as provided for in case of an appeal from the original determination.

Sec. 10. Section 23-775, Arizona Revised Statutes, is amended to read:

23-775. Disqualification from benefits

An individual shall be disqualified for benefits:

1. For the week in which ~~he~~ THE INDIVIDUAL has left work voluntarily without good cause in connection with the employment, and in addition to the waiting week, for the duration of ~~his~~ THE INDIVIDUAL'S unemployment and until ~~he~~ THE INDIVIDUAL has earned wages in an amount equivalent to five times ~~his~~ THE INDIVIDUAL'S weekly benefit amount otherwise payable. If a person leaves because of transportation difficulties, ~~he~~ THE INDIVIDUAL shall be disqualified unless ~~he~~ THE INDIVIDUAL can show ~~his~~ THE INDIVIDUAL'S travel requirements are in excess of the normal practice in ~~his~~ THE INDIVIDUAL'S occupation and ~~his~~ past practice or that ~~he~~ THE INDIVIDUAL has compelling personal circumstances requiring ~~his~~ THE INDIVIDUAL'S leaving. Compelling

1 personal circumstances shall include but are not limited to a showing of any  
2 of the following:

3 (a) Over thirty miles distance from ~~his~~ THE INDIVIDUAL'S home to ~~his~~  
4 work.

5 (b) More than one and one-half hours to reach work.

6 2. For the week in which ~~he~~ THE INDIVIDUAL has been discharged for  
7 wilful or negligent misconduct connected with the employment, and in addition  
8 to the waiting week, for the duration of ~~his~~ THE INDIVIDUAL'S unemployment  
9 and until ~~he~~ THE INDIVIDUAL has earned wages in an amount equivalent to five  
10 times ~~his~~ THE INDIVIDUAL'S weekly benefit amount otherwise payable.

11 3. For any week with respect to which or a part of which ~~he~~ THE  
12 INDIVIDUAL has received or is seeking unemployment benefits under an  
13 unemployment compensation law of another state or of the United States, but  
14 if the appropriate agency of ~~such~~ THE other state or of the United States  
15 finally determines that ~~he~~ THE INDIVIDUAL is not entitled to ~~such~~  
16 unemployment benefits, ~~such~~ THE ineligibility shall not apply.

17 4. For the week in which ~~he~~ THE INDIVIDUAL becomes unemployed and for  
18 not more than the following three weeks, if ~~his~~ THE INDIVIDUAL'S unemployment  
19 is due solely to a customary suspension of all operations, except maintenance  
20 work, at the factory, plant or other premises at which ~~he~~ THE INDIVIDUAL was  
21 last employed, which will not occur more than once in a calendar year and  
22 will not exceed four consecutive weeks' duration, and ~~that his~~ THE employment  
23 will again be available to ~~him—upon~~ THE INDIVIDUAL ON resumption of  
24 operations. For THE purposes of this paragraph:

25 (a) "Customary suspension" means a suspension ~~which~~ THAT has occurred  
26 for the same or similar reasons in each of three consecutive years or more,  
27 including the year in question, regardless of whether the suspension in any  
28 previous year would have satisfied the requirements of this paragraph. A  
29 suspension provided for by an agreement to which the employer is a party  
30 shall be considered customary unless the agreement specifies the exact time,  
31 duration, type and circumstances of the suspension. Any suspension whose  
32 details are determined by the employer shall be considered customary,  
33 regardless of the employer's ultimate reason for imposing it, as long as the  
34 employer's reason or reasons are the same or similar over the necessary  
35 period.

36 (b) "Factory, plant or other premises" means any location or premises  
37 or portion of locations or premises of the employer where the work or  
38 operations are separate and distinct from those at other locations or  
39 premises or portions of locations or premises, regardless of geographic  
40 proximity or functional, geographic or administrative integration of the work  
41 or operations.

42 (c) "Maintenance work" has its usual meaning and includes any  
43 administrative, executive, clerical or supervisory work or any other work  
44 necessary to keep the factory, plant or other premises in a position to

1 resume full operations promptly at the end of the suspension or necessary to  
2 pay, supervise or otherwise support individuals performing such work.

3 **5. FOR ANY WEEK IN WHICH THE INDIVIDUAL IS INCARCERATED.**

4 Sec. 11. Section 23-779, Arizona Revised Statutes, is amended to read:

5 **23-779. Amount of benefits**

6 A. The weekly benefit amount of an individual shall be an amount equal  
7 to one twenty-fifth of the person's total wages for insured work paid during  
8 that quarter of the person's base period in which such total wages were  
9 highest, but if:

10 ~~1. From and after June 30, 1998, and before July 1, 1999, this amount~~  
11 ~~is more than one hundred ninety-five dollars, the weekly benefit amount shall~~  
12 ~~be one hundred ninety-five dollars.~~

13 ~~2.~~ 1. From and after June 30, 1999 AND BEFORE JULY 1, 2004, this  
14 amount is more than two hundred five dollars, the weekly benefit amount shall  
15 be two hundred five dollars.

16 2. FROM AND AFTER JUNE 30, 2004, THIS AMOUNT IS MORE THAN TWO HUNDRED  
17 FORTY DOLLARS, THE WEEKLY BENEFIT AMOUNT SHALL BE TWO HUNDRED FORTY DOLLARS.

18 B. If the weekly benefit amount is less than the maximum weekly  
19 benefit prescribed in subsection A and is not a multiple of one dollar ~~such,~~  
20 **THE** amount shall be rounded to the nearest dollar, with an even one-half  
21 dollar being rounded to the next higher multiple of one dollar. An  
22 individual's benefit amount shall not be redetermined during the person's  
23 benefit year because of a new maximum or minimum weekly benefit amount  
24 becoming effective during the person's benefit year.

25 C. Each eligible individual unemployed with respect to any week shall  
26 be paid with respect to ~~such~~ **THAT** week a benefit in an amount equal to the  
27 person's weekly benefit amount less that part of the wages, if any, payable  
28 to the person with respect to ~~such~~ **THAT** week which is in excess of thirty  
29 dollars. The benefit, if not a multiple of one dollar, shall be rounded to  
30 the nearest dollar, with an even one-half dollar being rounded to the next  
31 higher multiple of one dollar.

32 Sec. 12. Section 23-787, Arizona Revised Statutes, is amended to read:

33 **23-787. Repayment of and deductions for benefits obtained by**  
34 **claimants not entitled to benefits; collection**

35 A. A person who receives any amount as benefits under this chapter to  
36 which ~~he~~ **THE PERSON** is not entitled is liable to repay the overpaid amount to  
37 the department. The department may deduct all or a portion of the  
38 overpayment from future benefits payable to the person under this chapter.

39 B. If benefits to which a person is not entitled are received by  
40 reason of fraud as determined by the department, the person is not eligible  
41 to receive any benefits under this chapter until the total amount of the  
42 overpayment has been recovered or otherwise satisfied in compliance with a  
43 civil judgment.

44 C. If benefits to which a person is not entitled are received without  
45 any fault on ~~his~~ **THE PERSON'S** part and if repayment or deduction from future

1 benefits would ~~either defeat the purpose of this chapter or~~ be against equity  
2 and good conscience, the department may waive all or a portion of the amount  
3 overpaid.

4 D. If benefits to which a person is not entitled are received without  
5 any fault on ~~his~~ THE PERSON'S part, deductions made by the department  
6 pursuant to subsection A from benefits payable to an individual for any week  
7 shall not exceed twenty-five per cent of the individual's weekly benefit  
8 amount unless required by federal law, except that the amount recouped from  
9 benefits payable may be fifty per cent of the weekly benefit amount if the  
10 individual has previously received benefits but has not received benefits for  
11 at least twelve consecutive months prior to the most recent receipt of  
12 benefits and there has been no reasonable attempt to repay the indebtedness  
13 during that period. The fifty per cent recoupment rate may not be put in  
14 effect prior to one year after the establishment of the overpayment.

15 E. The department shall adopt rules to implement the provisions of  
16 subsection D.

17 F. The attorney general or the appropriate county attorney may  
18 institute appropriate court proceedings to recover in the name of the  
19 department any amount for which a person is liable to the department.

20 Sec. 13. Section 23-791, Arizona Revised Statutes, is amended to read:

21 23-791. Benefits reduced by pension payment; definition

22 A. Except as provided in ~~subsection~~ SUBSECTIONS B AND C, the amount of  
23 benefits payable to an individual for any week ~~which~~ THAT begins in a period  
24 with respect to which the individual is receiving or will receive a pension  
25 under a plan maintained or contributed to by a base-period employer of the  
26 individual shall be reduced by EITHER:

27 1. The amount of ~~such~~ THE pension ~~which~~ THAT is reasonably  
28 attributable to ~~such~~ THE week if the individual contributed less than  
29 forty-five per cent of the amount for the pension. ~~;-or~~

30 2. Forty-five per cent of the amount of ~~such~~ THE pension ~~which~~ THAT is  
31 reasonably attributable to ~~such~~ THE week if the individual contributed at  
32 least forty-five per cent but less than one hundred per cent of the amount  
33 for the pension.

34 B. The amount of benefits payable to an individual for any week shall  
35 not be reduced by reason of the receipt of a pension if the services  
36 performed during the base period by the individual for the base-period  
37 employer or remuneration received for ~~such~~ THOSE services did not affect the  
38 individual's eligibility for nor increase the amount of ~~such~~ THE  
39 pension. The conditions specified by this subsection do not apply to  
40 pensions paid under the social security act or the railroad retirement act of  
41 1974 or the corresponding provisions of prior law. Pensions paid under ~~such~~  
42 THOSE acts shall be treated in the manner specified by subsection A.

43 C. BENEFITS SHALL NOT BE REDUCED BY THE RECEIPT OF SOCIAL SECURITY  
44 RETIREMENT IN ORDER TO TAKE INTO ACCOUNT CONTRIBUTIONS MADE BY THE INDIVIDUAL  
45 FOR THE PENSION.

1           ~~C.~~ D. ~~In this~~ FOR THE PURPOSES OF THIS section, "pension" means a  
2 governmental or other pension, retirement or retired pay, annuity or other  
3 similar periodic payment ~~which~~ THAT is based on the previous work of the  
4 individual.

5           Sec. 14. Retroactivity

6           Section 23-779, Arizona Revised Statutes, as amended by this act,  
7 applies retroactively to from and after June 30, 2004.

8           Sec. 15. Effective date

9           Sections 23-621 and 23-729, Arizona Revised Statutes, as amended by  
10 this act, are effective from and after December 31, 2004.

11          Sec. 16. Applicability

12          The allocation process set forth in section 23-621, subsection C,  
13 Arizona Revised Statutes, as amended by this act, does not apply to wages,  
14 dismissal pay or severance pay paid to an individual in accordance with an  
15 employment contract entered into before January 1, 2005.